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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 COLEMAN-TOLL LIMITED) Case No. 2:11-cv-1227-PMP-CWH
16 PARTNERSHIP,)
17 Plaintiff,) **JOINT MOTION TO STAY**
18 vs.) **PROCEEDINGS PENDING TRANSFER**
19 REHAU, INC., and DOES 1-10,) **TO MDL AND MEMORANDUM OF**
inclusive,) **POINTS AND AUTHORITIES**
20 Defendants.)

21 Plaintiff Coleman-Toll Limited Partnership (“Coleman-Toll”) and defendant REHAU
22 Incorporated (“REHAU”) (collectively “the parties”) move the Court to stay all proceedings in
23 this action pending a decision by the Judicial Panel on Multidistrict Litigation (the “Panel”)
24 regarding whether to centralize this action and twelve other actions pending in federal district
25 courts in Nevada, Arizona, and Oregon in a single district court for pretrial proceedings pursuant
26 to 28 U.S.C. § 1407.
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

On July 27, 2011, Coleman-Toll filed the Complaint in this action, alleging that it incurred damages as the result of plumbing components in the Terra Bella Community located in Las Vegas, Nevada. Coleman-Toll asserts four causes of action against REHAU: Equitable Indemnity, Breach of Implied Warranty, Breach of Express Warranty, and Attorney's Fees. REHAU filed a motion to dismiss the Complaint on September 1, 2011, which the Court subsequently denied. On November 2, 2011, REHAU filed its Answer to the Complaint. There are currently no pending motions in this matter.

On November 10, 2011, a number of plaintiffs involved in other actions filed a motion with the Panel requesting transfer of thirteen cases to the United States District Court of Nevada in Las Vegas, Nevada ("MDL Motion"). *See In re Yellow Brass Plumbing Component Litig.*, MDL Docket No. 2321 (Exhibit 1). The MDL Motion lists this case as one of the actions for which the plaintiffs seek centralization. *See Id.* at 4. The parties to this action were not involved in the filing of the MDL Motion.

The Court has the "inherent authority to stay proceedings before" it. *Mangani v. Merck & Co.*, No. 2:06-cv-00914, 2006 WL 2707459, at *1 (D. Nev. Sept. 19, 2006) (quoting *Rohan ex rel. Gates v. Woodford*, 334 F.3d 803, 817 (9th Cir. 2003)). Factors relevant to the Court's consideration of "a motion to stay proceedings pending a possible transfer to an MDL court" include "any potential prejudice to the non-moving party, hardship or inequity to the moving party if the proceedings are not stayed, and the interests of judicial economy and efficiency." *Id.*

Both parties in this action request a stay of the proceedings here, and therefore there is no prejudice to any party if the stay is granted. Denying the stay, however, will cause hardship to the parties because absent a stay, they face imminent deadlines for pretrial and other case management activities. At the same time, the parties need to participate in the briefing, argument and other proceedings before the Panel.

A stay promotes the interests of judicial economy and efficiency. If the stay is denied, this Court risks "needlessly expend[ing] its energies familiarizing itself with the intricacies of a case that [may] be heard by another judge." *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D.

1 Cal. 1997). Further, "any efforts on behalf of this Court concerning case management will most
 2 likely have to be replicated by the judge that is assigned to handle the consolidated litigation if the
 3 MDL Panel does not consolidate the . . . cases in this Court." *Id.*

4 For these reasons, the parties respectfully request that the Court enter an order directing
 5 that (1) this action is stayed pending the Panel's action on the MDL Motion and (2) the parties
 6 shall notify the Court of the Panel's action on the MDL Motion within 10 days of the Panel taking
 7 action.

8 Dated: November 22, 2011

9 MORRIS PETERSON

10 By /s/ Ryan Lower

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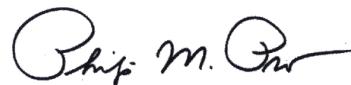
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 Coleman-Toll Limited Partnership

21 IT IS SO ORDERED.

22
 23 
 24

25 PHILIP M. PRO
 26 UNITED STATES DISTRICT JUDGE

27 Dated: November 28, 2011.

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2 **CERTIFICATE OF SERVICE**
3

4 Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing
5 Procedures, I certify that I am an employee of MORRIS PETERSON, and that the following
6 documents were served via electronic service: **JOINT MOTION TO STAY PROCEEDINGS**
7 **PENDING TRANSFER TO MDL AND MEMORANDUM OF POINTS AND**
8 **AUTHORITIES**

9 TO:

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21 DATED this 20 day of November, 2011.

22 By Patty Cannon